

**To the Extraordinary General Meeting of Shareholders of S.N.G.N. Romgaz S.A.**

**Approved:**  
CEO  
**Adrian Constantin VOLINTIRU**

### **REQUEST FOR APPROVAL**

**for purchasing legal assistance, consultancy and representation services for reviewing the legal context in order to exercise the preemption right concerning the transfer of assets of a trading company under reorganization**

#### **Brief History**

On July 14, 2020, SNGN ROMGAZ SA received a notification on the syndic judge's confirmation of the Reorganization Plan, as modified, of one of the most important electric and thermal power suppliers in Romania.

Pursuant to the notification and the reorganization plan, the Ministry of Economy, Energy and Business Environment is given a preemption right, directly or through the entities managed by it, for a period of up to 6 months from the date of the receipt of the notification to express its binding intention to purchase the business of said trading company.

The reorganization plan, as modified, provides, as main reorganization strategy, the transfer of assets from the company's patrimony, at a market value estimated by an independent evaluator in 2018, without taking into consideration the investments made, the ongoing investments and the inventories value.

Through the reorganization plan a preemption right was also given to the Municipality of Bucharest to the extent it is interested and has financial capacity; if the Municipality of Bucharest does not show interest or financial capacity, considering the strategic importance, a preemption

right was given to the Romanian Government, through the Ministry of Economy, Energy and Business Environment or the entities managed by it.

The document also provides the option to give the preemption right to a newly established company where ownership interest is held by the Municipality of Bucharest , directly or through companies where it is shareholder, and/or by the Romanian State through the Ministry of Economy, Energy and Business Environment, directly or by entities managed by it.

### **Current Status**

The scope of business of the company which is the subject of the reorganization plan is thermal power generation, transmission, distribution, dispatch and sale as well as electric power generation and sale having the required licenses for the commercial operation of thermal and electric power co-generation production capacities valid until March 2028.

The company is one of the most important thermal energy producers in Romania, ensuring at the same time an important share of the electric power generation pursuant to Transelectrica report published in 2017.

*The preliminary conclusions* establishing insolvency are as follows:

- Delayed or non-receipt of trade receivables under the commercial relationship with a public client;
- Significant debt from long term bank loans;
- Accrued debts owed to suppliers;
- Significant fiscal debts resulted from the fiscal control performed by the National Agency for Fiscal Administration;

Please note that SNGN ROMGAZ SA is an indispensable supplier of said company.

### *Preliminary analysis performed in-house based on public information*

By Decision no. 292 of May 25, 2020, a commission has been established at ROMGAZ SA level on reviewing the opportunity for the company to participate, alone or in partnership with another entity under the management of the Ministry of Economy, Energy and Business Environment, in the bidding process.

The internal technical commission reviewed the Reorganization Plan, as modified, the notification as well as the general legal framework applicable to the insolvency procedure, merger and acquisition etc.

At the same time, a number of financial-accounting documents as well as the status of ongoing and planned investments together with the related technical documentation, if any, were requested from the insolvency administrator.

The preliminary analysis of the factual situation identified several legal aspects with a direct impact on the preemption right which should be clarified prior to start drafting a potential firm, unequivocal and binding offer.

Therefore:

- with regard to insolvency matters, by exercising the preemption right given to some legal entities, it is possible to restrict other companies to participate to the purchase;
- with regard to competition matters, it is necessary to notify the Competition Council on the economic concentration, in order to verify the compatibility of this operation with a normal competitive environment;
- with regard to tax and insolvency matters, it is necessary to identify how the transaction documents are structured so as to ensure compliance with the applicable legislation;
- with regard to immovable property matters, it is necessary to have an additional expert analysis of the legal situation of transferred property, such as property titles, guarantees and encumbrances on property as well as ways of lifting such;
- with regard to administrative matters, several legal problematical issues were identified, including the following:
  - way of implementing Law No. 325/2006 on the public utility service of thermal energy supply, according to which the local public administration organizes, coordinates, monitors and controls the public utility supply service and may delegate the management of the public utility service to company operators;
  - the necessity to identify ways of dealing with regulating authorities with the aim of obtaining the permits and licenses necessary for managing the public service as well as creating the legislative framework enabling the new entity to perform such activity.
- with regard to environmental matters, there are several historical, current and future compliance obligations especially within the context of the new European Green Deal, under negotiation, which is very likely to have additional obligations imposed, bearing in mind that the production activity uses a mix of natural gas with fuel oil;

Upon identifying the complexity of legal issues, the review commission requested by letters no. 22201, 22202 and 22203 of July 16, 2020 the support of the Commercialization, Legal and Economic Departments with the purpose of consolidating the expertise by identifying experts in the above mentioned fields to be assigned to the project.

By letters no. 22401/July 17, 2020 and B123/July 17, 2020, both the Legal Department and the Economic Department stated that no expert specialized in the requested fields had been identified.

In view of the above, we believe it is necessary to purchase legal and economic-financial analysis services in order to assess the opportunity to exercise the right of preemption relating to the transfer of business from the company in question.

In order to determine the estimate value of the legal services supply contract, a non-binding tender procedure began, based on the description of the main activities to be carried out.

*Proposal to approach the analysis and the foreseen time schedule:*

- Performing both legal and the economic-financial analysis at the same time;
- Starting discussions with the competent regulatory authorities by ROMGAZ technical team;
- Preparing a preliminary legal report, 2 months after signing the legal services contract, including at least the following elements:
  - ✚ analysis of competition law, including a preliminary form of the notification on the economic concentration;
  - ✚ proposals for the bidding formula (S.N.G.N. ROMGAZ S.A. alone or in association with another entity under the authority of the Ministry of Economy, Energy and Business Environment, increase in share capital, any other legal form by which S.N.G.N. ROMGAZ S.A. can control the company etc.);
  - ✚ the manner in which the transaction is structured, a report containing elements of tax and insolvency law that may affect the transaction;
  - ✚ the procedural and legal steps to obtain the public service delegation agreement under the terms of Law No. 325/2006 on the public service for heating supply and, where appropriate, legislative and/or administrative proposals for the management of the contractual relationship with the main captive customer and debtor of the company;
- Preparing a preliminary economic-financial analysis, 2 months after signing the financial consultancy contract, including at least the following documents:
  - ✚ estimated costs for ROMGAZ to carry out the business transfer and financing the activity of the new company;
  - ✚ financing sources of the investment;
  - ✚ return on investment.
- Depending on the preliminary results of the legal and economic-financial analyses the necessity will be reviewed and, if the case may be, the extension of the preemption right term will be requested to ensure that the related legal deadlines shall be complied with (company registration, obtaining licenses/permits, obtaining the decision of the

Competition Council on compatibility with the competitive environment, creating/modifying the legal framework to award the delegated management to the new company, as the case may be).

- Performing an opportunity analysis by S.N.G.N. ROMGAZ S.A., based on the data provided by the teams of consultants, within 30 days from the date of the provision of preliminary reports;
- Informing the Board of Directors on the result of the opportunity analysis;
- If the Board of Directors endorses the analysis, the General Meeting of Shareholders is expected to be convened in the second part of November 2020 and the approval to be obtained in the second half of December 2020;
- Establishing a new company, if appropriate, and submitting an unequivocal offer in January 2021.

Based on a preliminary analysis of the time limits provided for by the competition law, it is unlikely to meet the six-months deadline for submitting a binding and unequivocal offer. Under these circumstances, we consider it necessary to start discussions with the judicial administrator in order to assess the possibility of extending the deadline and amending the Reorganization Plan accordingly, as confirmed by the syndic judge.

### **Proposals**

Bearing in mind:

- The previously mentioned information on future procedural and administrative steps to be made in order to prepare a document underlying ROMGAZ decision on exercising the preemption right given to the Ministry of Economy, Energy and Business Environment, directly or through entities managed by it, by submitting a firm and binding offer to perform the transfer of the business;
- The legal provisions of Article I, paragraph (3), item a) of GEO No. 26/2012 on certain measures on public spending cuts and reinforcement of financial discipline and modifying and supplementing certain normative acts, as approved by Law No. 16/2013;
- The provisions of Article 12, paragraph (6), item p) of the Articles of Incorporation of S.N.G.N. ROMGAZ S.A. as updated on August 09, 2017;
- The provisions of Article 19, paragraph (1) and paragraph (3), item (g);

We hereby submit for approval to the Extraordinary General Meeting of Shareholders the following draft resolution:

“The Extraordinary General Meeting of S.N.G.N. ROMGAZ S.A. approves the procurement of legal assistance, consultancy and representation services pursuant to Article I, paragraph (3), item a) of GEO No. 26/2012 on certain measures on public spending cuts and reinforcement of financial

discipline and modifying and supplementing certain normative acts, as approved by Law No. 16/2013”

**Given that the full document contains confidential information, the shareholders who are registered in the last Register of S.N.G.N. ROMGAZ S.A. Shareholders, kept and provided by Depozitarul Central S.A., have the right to consult it at the company’s headquarters in C.I. Motas Square, No. 4, Medias, Sibiu County, under the condition of signing a confidentiality agreement.**